

Appn. No. 10/646,156
Amendment dated February 12, 2009
Reply to Office Action mailed November 12, 2008

REMARKS

Reconsideration is respectfully requested.

Status of Claims

Claims 7 through 18 and 22 have been cancelled.

No claims have been withdrawn.

No claims have been added.

Claims 1 - 6, 19 - 21, and 23 - 24 are pending in this application.

Paragraph 4 of the Office Action

Claims 1 through 18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Drosset in view of Blom.

Claim 1 as amended, requires, in part, that "reception of said request to store the particular piece of the content occurs during the time of transmission of the content in said streaming content format, and delivering of the particular piece of the content in said archival format occurs in real time of the transmitting of the content in the first streaming content format". Claim 20 has been amended to include the requirements of claim 22, and thus requires that "the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format, and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format". Claim 24 requires that "receiving said request to store the particular piece of the content occurs during transmitting the content in the first streaming content format, and delivering of the particular piece of the transmitted content in the second archival format occurs at least partially during the transmitting of the content in the first streaming content format".

RECEIVED
CENTRAL FAX CENTERAppln. No. 10/646,156
Amendment dated February 12, 2009
Reply to Office Action mailed November 12, 2008

FEB 12 2009

This feature of the disclosed system permits one to listen to a piece of content in a streamed format that cannot be stored, so that the user can sample the content without incurring the cost of a more permanent storable download. The user may then request the content in a second format that can be stored (presumably but not necessarily as part of a purchase of the content) while the content is being streamed to the user in the first format, without having to wait for the end of the streamed download to request the content in the archival format.

In the rejection of claim 22 in the Office Action, it is asserted that:

As per claim 22, the claim is rejected for the same reasons as claim 20, above, in addition, Drossel discloses, wherein the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format (username / password, fig 7), and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (stream Audio, fig 7, col 2, lines 38-52, col 3, lines 20-34).

However, looking to the Drossel patent at the cited sections, it is submitted that the requirements of claim 22 (now incorporated into claim 20), as well as the similar requirements of claims 1 and 24, are not disclosed or suggested by the Drossel patent.

Looking first to the section of the Drossel patent at col. 2, lines 38 through 52, it states that (emphasis added):

The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server. Metrics for play-out of each audio file, such as duration of play-out or number of play-outs, are maintained for the audio files and used to allocate payment of royalties or license fees to owners of rights in the audio files, such as copyrights or phonograph

Appln. No. 10/646,156
Amendment dated February 12, 2009
Reply to Office Action mailed November 12, 2008

rights. The user may also maintain and modify customized playlists through the server and send playlists to other users.

In this passage of the Drosset patent, there is a generalized description of the Drosset system that does not include any disclosure of the requirements quoted above. Moreover, this section of Drosset states "streaming" OR "download" of audio data files, suggesting that one or the other happens, but not both, at least not concurrently or in real time. Therefore, it is submitted that one of ordinary skill in the art, when considering this portion of the Drosset patent, would be more likely to understand that either "streaming" or "download" occurs, but not both.

Looking further to Drosset at col. 3, lines 20 through 34 states:

The architecture of FIG. 1 illustrates a variety of client devices and network configurations suitable for use according to the present invention. The client devices may include dedicated audio file devices, such as MP3 readers, or more generalized devices with audio capability, such as personal computers, personal data assistants, or laptop computers, that may be equipped with sound cards or similar equipment that permit an audio signal to be generated in response to an audio data file. Radio-frequency enabled devices, such as cell phones, automobile-based communication devices, or more general computing devices with wireless communication equipment, may also be used in accordance with the present invention.

This section of Drosset also includes a general discussion of the system of Drosset, but does not discuss the actual operation of the system, especially any operation of the system that permits the downloading of an archival file format while or concurrent with the streaming of the content in a streaming format.

"With respect to Figure 7, which is also referred to in the rejection, it is submitted that the drawing does not show any "delivering of the particular piece of the content in said archival format [that] occurs in real time of the transmitting of the content in the first streaming content format". Instead, Figure 7 appears to show one skilled in the art an

Appl. No. 10/646,156
Amendment dated February 12, 2009
Reply to Office Action mailed November 12, 2008

uninterrupted stream of audio data (elements 270A through 270D) until it is complete, with no other download occurring.

Further, with elements 284A through 288 of Figure 7, the Drosset patent appears to show an interruption of a stream of audio data by a request to "move up in the play list", which appears to end the streaming of the audio data for the streamed audio data. See, for example, Drosset at col. 6, lines 41 through 43, where it states that "The user may advance to the play list by requesting a move-up in the play list in message 288 to server 80." Thus, this action merely moves to the next audio in the playlist, but does not cause the download of content in a second file format during the streaming of the content, and thus does not disclose the requirements of claims 1, 20, and 24.

Still further, with elements 294A through 300 of Figure 7, the Drosset patent shows a request by the user to move back one entry in the play list. Again, there is no disclosure or suggestion that there is any concurrent download in a second archival format while being streamed in a first format. See, for example, Drosset at col. 6, lines 51 through 59, where it states that (emphasis added):

The user may request repeat of songs on the play list by sending a move back message 300 to server 80 which will halt streaming of the third audio data file and log duration of the play-out of the third audio file in message 296. Server 80 then queries database 90 for the second audio file in message 302, database 90 retrieves the audio file and returns it to server 80 in message 304, and server 80 proceeds with a repeat of the play-out of audio data file 2 in sequence of packets 306A-C.

This portion of the Drosset patent clearly indicates to one of ordinary skill in the art that streaming of the "third audio data file" before streaming the "second audio data file". It is submitted that one of ordinary skill would not be led to the requirements of claims 1, 20, and 24 by this portion of Drosset.

RECEIVED
CENTRAL FAX CENTER

FEB 12 2009

Appln. No. 10/646,156
Amendment dated February 12, 2009.
Reply to Office Action mailed November 12, 2008

Moreover, the Drosset patent discusses the formation of a playlist, rather than downloading content in a second archival format while it is being streamed in a first streaming format.

It is therefore submitted that the Drosset patent would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claims 1, 20, and 24 especially with the requirements set forth above, and therefore it is submitted that claims 1 and 20 are allowable over the prior art. Further, claims 2 through 6 and 19, and 21 through 22, which depend from claim 1 and claim 20, respectively, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

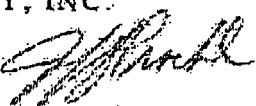
Withdrawal of the §103(a) rejection of claims 1 - 6, 19 - 21, and 23 - 24 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

GATEWAY, INC.

By 
Jeffrey A. Proebel (Reg. No. 35,987)
Customer No. 24,333
610 Gateway Dr., Y-04
N. Sioux City, SD 57049
Telephone (605) 846-2042 ext. 26809 (Lori Boulware - pat. assist.)
Fax (605) 232-2612

Date: Feb 12, 2009